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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES TREMLETT, STEVAN H. LEIDEN, MOSHE SAMBOL,
THOMAS ANTELL, STEVEN GARDELL, and FARDAD FARAHMAND

Appeal 2008-0858
Application 10/003,394
Technology Center 2400

Decided: December 8, 2008

Before LANCE LEONARD BARRY, HOWARD B. BLANKENSHIP, and
ST. JOHN COURTENAY III, *Administrative Patent Judges*.

BARRY, *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF THE CASE

A Patent Examiner rejected claims 1-31. The Appellants appeal therefrom under 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C. § 6(b).

A. INVENTION

The invention at issue on appeal segments an application into domains having associated policies. (Spec. 1.) According to the Appellants, "[a]pplication of the domain policies can . . . enable different business entities to offer services from the same application server without losing control over call handling." (*Id.* 2.)

B. ILLUSTRATIVE CLAIM

Claim 14, which further illustrates the invention, follows.

14. An application server connected outside a public switched telephone network (PSTN), comprising:

one or more aggregation domains, at least some of the domains having an associated authorization policy; and

a domain mapper that identifies one or more domains based on call information received by the application server outside the PSTN.

C. PRIOR ART

Rao	US 6,789,118 B1	Sep. 7, 2004
Liljestrand	US 6,853,714 B2	Feb. 8, 2005

D. REJECTION

Claims 1-31 stand rejected under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 6,853,714 ("Liljestrand") and U.S. Patent No. 6,789,118 ("Rao").

II. CLAIM GROUPING

When the patentability of dependent claims is not argued separately, the claims stand or fall with the claims from which they depend. *In re King*, 801 F.2d 1324, 1325 (Fed. Cir. 1986); *In re Sernaker*, 702 F.2d 989, 991 (Fed. Cir. 1983).

Here, the Appellants do not separately argue the patentability of dependent claims 2-7, 9-13, 15-18, 20-23, or 25-31. Therefore, these claims respectively stand or fall with claims 1, 8, 14, 19, and 24, from which they depend. "With this representation in mind, rather than reiterate the positions of the parties *in toto*, we focus on the issues therebetween." *Ex Parte Zettel*, No. 2007-1361, 2007 WL 3114962, at *2 (BPAI 2007).

III. EXTERNAL APPLICATION SERVER

The Examiner finds that "Lil discloses that application server can be either within the PSTN or outside the PSTN (column 1, lines 59-62). One of ordinary skill in the art would know how to make the modification to make the application server external." (Ans. 20.) The Appellants argue that "the Examiner is basing his rejection solely on an assumption or guess about the inner workings of the traditional platform located outside the PTN in Lil's Fig. 1, about which no information is supplied in Lil" (App. Br. 23.)

A. ISSUE

Therefore, the issue is whether the Appellants have shown error in the Examiner's finding that one of ordinary skill in the art would know how to modify an application server to be external to a PSTN.

B. PRINCIPLES OF LAW

The question of obviousness is "based on underlying factual determinations including . . . the level of ordinary skill in the prior art" *In re Zurko*, 258 F.3d 1379, 1383-84 (Fed. Cir. 2001) (citing *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966); *In re Dembiczak*, 175 F.3d 994, 998 (Fed. Cir. 1999); *In re Napier*, 55 F.3d 610, 613 (Fed. Cir. 1995)). "Every patent application and reference relies to some extent upon knowledge of persons skilled in the art to complement that [which is] disclosed. . . ." *In re Bode*, 550 F.2d 656, 660 (CCPA 1977) (quoting *In re Wiggins*, 488 F.2d 538, 543 (CCPA 1973)). Those persons "must be presumed to know something" about the art "apart from what the references disclose." *In re Jacoby*, 309 F.2d 513, 516 (CCPA 1962).

C. FINDINGS OF FACT

Liljestrand teaches that a service platform can be positioned outside of a public telephone network "such as the Public Switched Telephone Network" (Col. 1, l. 58.)

As aforementioned, the Examiner has found that one of ordinary skill in the art would know how to modify an application server to be external to a PSTN.

D. ANALYSIS

The Examiner's finding appears to be prima facie correct. For their part, the Appellants do not address the finding that one of ordinary skill in the art would know how to make the modification to make an application server external.

E. CONCLUSION

Without even addressing the Examiner's finding, the Appellants have shown no error therein.

IV. DOMAIN/AUTHORIZATION POLICY

The Examiner finds that "[t]he call policy of Rao implements subscriber policy based on the domain (column 8, line 58 to column 9, line 3). Accordingly, 'call policy' of Rao is a 'domain policy'." (Ans. 17-18.) The Appellants make the following argument.

Appellants' "domain-policy based routing" is completely different from Rao's "domain-based routing" because domain-policy based routing takes into consideration a wide variety of factors, and applies the rules of a particular domain policy to a particular user input, or subscriber input, in accordance with the operation of Appellants' invention . . . as fully presented in its specification.

(App. Br. 16.)

A. ISSUE

Therefore, the issue is whether the Appellants have shown error in the Examiner's finding that Rao discloses a domain/authorization policy.

B. PRINCIPLES OF LAW

"[T]he PTO gives claims their 'broadest reasonable interpretation.'" *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004) (quoting *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000)). "Moreover, limitations are not to be read into the claims from the specification." *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (citing *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989)). "[A]lthough the specification often describes very specific embodiments of the invention," *Phillips v. AWH Corp.*, 415 F.3d 1303, 1323 (Fed. Cir. 2005), the U.S. Court of Appeals for the Federal Circuit "ha[s] repeatedly warned against confining the claims to those embodiments." *Id.*

C. FINDINGS OF FACT

Rao's "FIG. 3 is an exemplary flow diagram for processing a connection request coming into the switch of FIG. 1." (Col. 8, ll. 58-59.) More specifically, "in step 50, the connection manager 46 detects an incoming call In step 52, the connection manager 46 notifies the resource manager 38 . . . of the incoming call." (*Id.* ll. 60-64.)

The resource manager 38, in step 54, searches a call policy database for a call policy record corresponding to the incoming call. The call policy record includes various parameters which dictate how the call is to be routed. Different policies may be applied based on the inlink of the call, a telephone number,

a domain name, a source address, a destination address, and the like.

(Col. 8, l. 64 – col. 9, l. 3 (emphasis added).)

D. ANALYSIS

The Examiner's finding that Rao's domain name-based call policy constitutes a domain/authorization policy appears to be prima facie correct. Although the Appellants identify "various examples" (App. Br. 16) of domain policies from their Specification, it is uncontested that "[s]uch limitations are not in the claims." (Ans. 18.) We decline to read such limitations into the claims. Furthermore, such examples merely constitute embodiments of the Appellants' invention. We decline to confine the claims to these exemplary embodiments. Giving the independent claims the broadest, reasonable construction, we find that the claimed domain/authorization policy reads on Rao's domain name-based call policy.

E. CONCLUSION

Relying on unclaimed limitation and embodiments, the Appellants have shown no error in the Examiner's finding that Rao discloses a domain/authorization policy.

V. COMBINING TEACHINGS

The Examiner makes the following conclusion.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Lil in view of Rao to provide based on the information corresponding to the call,

selecting a domain policy, the domain policy applying to a set of subscribers; and handling the call in accordance with the selected domain policy.

(Ans. 5.) He bases his conclusion on the finding that such a "[o]ne would be motivated to do so to allow proper handling of callers." (*Id.* 19.) The Appellants argue that "[t]his is a conclusionary [sic] statement No supporting evidence is provided upon which to base this conclusion."

(Reply Br. 3.) They also add the following arguments.

With respect to the ISO (International Standards Organization) OSI (Open Systems Interconnection) networking protocol hierarchy, Lil's disclosure is directed to operation within layer six (presentation) and layer seven (application) - call treatment services. But, by contrast, Rao's switch disclosure is directed to operation within layer two (data link) and layer three (network) routing services (Rao, col. 2, line 13). Accordingly, one of ordinary skill in the art in reading Lil and seeking a solution to a missing domain policy in Lil, would not be motivated by any disclosure in Lil, based on protocol layers six and seven, to seek that solution by searching in Rao's switching disclosure based on protocol layers two and three and vice-versa.

Furthermore, there would not be a reasonable expectation or likelihood of success in operation of a solution derived from such a combination of references because the protocol layers in the references do not match each other, and any such combination would necessarily result in a network protocol layer mismatch.

(App. Br. 21.)

A. ISSUE

Therefore, the issue is whether the Appellants have shown error in the Examiner's reason for combining teachings from Liljestrand and Rao.

B. PRINCIPLES OF LAW

The presence or absence of a reason "to combine references in an obviousness determination is a pure question of fact." *In re Gartside*, 203 F.3d 1305, 1316 (Fed. Cir. 2000) (citing *In re Dembiczak*, 175 F.3d 994, 1000 (Fed. Cir. 1999)). "The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR Int'l v. Teleflex Inc.*, 127 S.Ct. 1727, 1739 (2007).

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, §103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.

Id. at 1740. Furthermore, a reason to combine teachings from the prior art "may be found in explicit or implicit teachings within the references themselves, from the ordinary knowledge of those skilled in the art, or from the nature of the problem to be solved." *WMS Gaming Inc. v. Int'l Game Tech.*, 184 F.3d 1339, 1355 (Fed. Cir. 1999) (citing *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

C. FINDINGS OF FACT

As aforementioned, the Examiner's reason for combining teachings from Liljestrand and Rao is to allow proper handling of callers.

D. ANALYSIS

Such a reason is based on the ordinary knowledge of those skilled in the art and appears to be prima facie correct. The Appellants do not contest that call policies like those shown in Rao would have facilitated proper handling of calls. We do not require supporting evidence of an uncontested matter of ordinary knowledge in the art.

For that matter, the Appellants' premise that "Lil's disclosure is directed to operation within layer six (presentation) and layer seven (application)" (Appeal Br. 21) appears to be a mere allegation. Regardless, we find that one of ordinary skill in the art would have known how to implement different functions at different layers of the OSI model.

E. CONCLUSION

Not contesting that combining teachings from Liljestrand and Rao would have allowed proper handling of callers, the Appellants have shown no error in the Examiner's reason for combining teachings from the references.

VI. ORDER

For the aforementioned reasons, we affirm the rejection of claims 1-31 under § 103(a).

Appeal 2008-0858
Application 10/003,394

No time for taking any action connected with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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